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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-357

J.L. SIMMONS COMPANY, INC., *Petitioner*

v.

LOCAL 742, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, JOHN FOREMAN, BUSINESS AGENT, AND HAROLD STOLLEY, STEWARD

AND

NATIONAL LABOR RELATIONS BOARD

MOTION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI AND BRIEF AMICUS CURIAE

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The Chamber of Commerce of the United States of America (hereinafter "the Chamber") hereby moves the Court for leave to file the attached brief *amicus curiae* in support of the petition for writ of certiorari in this case.

In support whereof, the following is respectfully shown:

1. The Chamber is a business federation with a membership of more than 3700 state and local chambers of commerce and trade and professional associations, a direct

business membership in excess of 38,000, and an underlying membership of more than 5 million individual businessmen and business firms, a substantial number of which are engaged in commerce and subject to the National Labor Relations Act. It is the largest association of business and professional organizations in the United States.

2. The Chamber has appeared as *amicus curiae* in labor relations matters which have affected employers in a wide variety of enterprises. For example, the Chamber recently appeared as *amicus curiae* in urging to this Court that the National Labor Relations Board cannot undermine the fundamental principle of free collective bargaining by ordering agreement to a substantive term of a collective bargaining agreement,[1] and that in order to foster voluntary collective bargaining, equitable relief should be available to compel compliance with agreements freely made.[2] Other matters of particular concern in which the Chamber has recently filed *amicus* briefs involve: the issue of whether it is necessary, in order to establish a violation of Section 8(b)(4)(B) of the Act, to show that a union's object is to bring about a total cessation of business between the neutral and primary employer;[3] and the question of whether under Section 8(a)(5) of the Act a retired individual continues to be considered an "employee" of the employer from whom he has permanently retired, so as to require the employer to bargain over his settled pension

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[1] *H. K. Porter Company, Inc. v. N.L.R.B.*, 397 U.S. 99 (1970).

[2] *Boys Market, Inc. v. Retail Clerks Local 770*, 398 U.S. 235 (1970).

[3] *Burns & Roe v. Local 825, Operating Engineers*, U.S. , 27 L. Ed. 2d 398 (1971).

benefits.[4] The Chamber has a similar interest in the instant litigation and believes that its views and experience may be of assistance to the Court.

3. The subject of the instant case—whether a union may exert pressure on its members' employer to preserve work traditionally performed by such members, even though the employer can meet such pressure only by ceasing to do business with a supplier not involved in the dispute—is a matter of substantial concern to the Chamber. In 1947 and 1959 Congress sought to protect neutral bystanders from involvement in the labor disputes of others. Despite the Taft-Hartley Act and the Landum-Griffin amendments to the National Labor Relations Act, however, many unions continue to resort to unlawful secondary conduct to achieve their goals.[5]

The protection afforded by Section 8(b)(4) of the National Labor Relations Act is the sole bulwark of employers against labor organizations who seek to achieve their ends by forcing employers to cease or to interrupt their business relationships. To require, as the lower court's decision would, the abandonment of the Boards "right to control doctrine" as a legitimate means for assessing the legality of union boycott would constitute, we submit, an unwarranted dilution of the protections Congress intended to afford neutral employers under Section 8(b)(4).

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[4] *Allied Chemical & Alkali Workers v. Pittsburgh Plate Glass Company* and *N.L.R.B. v. Pittsburgh Plate Glass Company* (Supreme Court, October Term, 1970) Nos. 910 and 961.

[5] Of the total unfair labor practice charges filed against unions under Section 8(b) of the Act during NLRB Fiscal Year 1970, 31.2% involved alleged violations of the secondary boycott provisions of Section 8b(b). *Summary* Operations of NLRB General Counsel, reprinted in 1971 CCH Analysis, ¶ p. 13, 531.

If this Motion for Leave to File an Amicus brief is granted, the Chamber will offer for the Court's consideration compelling reasons which require the continued utilization and application of the right to control test. The question of the propriety of that test has never heretofore been squarely presented for decision by this Court having been specifically reserved for future decision by this Court in the *National Woodwork* case.[6] Moreover, since the lower Court's rejection of this test is squarely predicated upon this Court's sharply divided decision in *National Woodwork*, the Chamber will also urge the necessity for the Court's reconsideration of that decision. An explication of the Court's holding or, alternatively, reversal of that decision is required in light of the continuing eroding effects of that decision upon the protection afforded neutral employers. This is evidenced not only by the result reached in the instant case but by other recent cases which have issued since that decision.

4. The Chamber, pursuant to Rule 42 of the Rules of this Court, has requested consent from all parties to file a brief *amicus curiae* in this matter. While the Honorable Erwin N. Griswold, Solicitor-General of the United States, and the Petitioner consented to the filing of an *amicus* brief, consent was not received from the Union. The Chamber recognizes under Rule 42 amicus briefs in support of a petition for certiorari are not favored. Nevertheless, because of the far-reaching significance of the decision below, the Chamber believes it essential that the Court be aware of the views of American industry.

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[6] *National Woodwork Manufacturers Assn. v. N.L.R.B.*, 386 U.S. 612 (1967).

WHEREFORE, in recognition of these considerations and in view of the importance of the issues involved to all member-employers, whose consensus opinions the Chamber is authorized to set forth before the Court, it is respectfully requested that this motion for leave to file a brief *amicus curiae* be granted for such purpose.

Respectfully submitted,

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